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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 37

DAVID A. WRIGHT, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

BRIEF FOR THE UNITED STATES

OPINION BELOW

The order of the Court of Claims overruling the petition below (R. 6) was entered without an opinion.

JURISDICTION

The order of the Court of Claims was entered February 8, 1937 (R. 6). The petition for a writ of certiorari was filed April 30, 1937 (R. 6), and was granted June 1, 1937 (R. 6). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED

Whether a bill becomes a law without the signature of the President where, on the tenth day after the presentation of such bill to the President, he is prevented from returning it together with his objections to the House of Congress in which the bill originated, because that House has adjourned.

Whether a bill becomes a law without the signature of the President where the President, on the tenth day after the bill was presented to him, returns the bill together with his objections to the Secretary of the Senate (the House in which the bill originated), the Senate being then in recess pursuant to an adjournment for three days.

CONSTITUTIONAL PROVISIONS INVOLVED

The applicable portions of the Constitution are set forth in notes 1 and 2, pages 7, 9, and 10, *infra*.

STATEMENT

The facts as disclosed by the record (R. 1–4) may be summarized as follows:

Senate Bill No. 713 authorized the Court of Claims to reopen and rehear a claim of the petitioner which had theretofore been decided against him (R. 3, 4). The bill was presented to the President of the United States on Friday, April 24, 1936 (R. 1). It had originated in the Senate (R. 3). On Monday, May 4, 1936, that body took a recess until noon Thursday, May 7, 1936, but the

House of Representatives remained in session (R. 1). On May 5, 1936, and while the Senate was in recess, the President returned the bill, together with a message addressed to the Senate setting forth his objections to the bill. The bill and the message were delivered to the Secretary of the Senate (R. 2). When the Senate reconvened on May 7, 1936, the Secretary thereof, by letter, advised it of the return of the bill and the delivery of the message of the President (R. 2). Thereupon the bill, together with the President's message, was referred to the Committee on Claims of the Senate (R. 3). No further action was taken thereafter (R. 3).

On September 14, 1936, the petitioner, acting under the asserted authority of S. 713, filed a petition in the Court of Claims to reinstate, reopen, rehear, and readjudicate his claim, which had theretofore been dismissed. *Wright* v. *United States,* 60 C. Cls. 519. The United States opposed this petition on the ground that Senate Bill 713 had never become a law (R. 5, 6). The court below overruled the petition on February 8, 1937 (R. 6).

SUMMARY OF ARGUMENT

The Constitution and the decisions of this Court make clear that at least in every other situation than the one here presented the President has ten days (Sundays excepted) within which to manifest his approval or disapproval of bills presented to him by the Congress. The question now raised

is whether the case of an adjournment at the end of seven days by the House in which the bill originated, while the other House remains in session, constitutes an exception, so that, regardless of what the President may do thereafter, the bill becomes a law.

I

The first question is whether, assuming that the return of the bill was "prevented" within the meaning of the Constitution, it was "the Congress by their Adjournment" which prevented it. The petitioner contends that this phrase can only be construed as referring to a concurrent adjournment of both Houses of Congress. The use of the plural in the pronominal adjective "their" and the verb "prevent", upon which petitioner relies, is without significance in view of the fact that the usage of the Constitution would have required the plural likewise to be employed in any alternative phrasing, even as applied to a single House of Congress. The Constitution elsewhere illustrates the disjunctive use of the plural "their", referring in the indefinite sense to one or the other House of Congress, as the case may be. Any action taken in pursuance of authority conferred by the Constitution, whether by one of the component branches of Congress or by both, may appropriately be spoken of as action of Congress. If the phrase, "unless the Congress by their Adjournment prevent", be understood in this inclusive sense, there

is no difficulty in concluding in this case that "the Congress by their Adjournment prevent[ed the] Return" of the bill when the only House to which it could have been sent, exercising a power authorized by Article I to be exercised separately, rendered itself incapable of receiving it.

Under the view urged by the petitioner, a single House of Congress would be enabled to reduce from ten to seven days the time within which the President's power of veto can be exercised. Such a result the Constitution plainly forbids. *The Pocket Veto Case,* 279 U. S. 655, 675. By obtaining the consent of the other House, the House of origin, indeed, might adjourn for ten days and so take away the power of veto altogether. The powers of the executive and legislative branches of the Government were intended to function harmoniously. To carve out an exception to the established doctrine protecting the President's power of veto from destruction or impairment by Congress would be to deny accepted canons of constitutional interpretation and to subtract much of the meaning from this Court's express declarations concerning the scope of the power.

II

This Court in *The Pocket Veto Case, supra,* at pp. 680–685, held that an adjournment of the first session of a Congress "prevented" the return of a bill, saying that "the 'House' to which the bill

is to be returned, is the House in session." It is not clear that this holding applies to an adjournment by a single House for a period constitutionally limited to three days. The return of a bill to a permanent officer of the House in such a case involves no violation of the purpose of the Constitution that the status of a bill should not be kept in prolonged uncertainty and that reconsideration by the Congress in the light of the President's objections should be immediate. This, however, is a question as to whether the bill should be held not to have become a law because of a so-called pocket veto, or because of the failure of Congress to reconsider it and pass it over the President's veto. It is plain in any event that the bill did not become a law in the absence of either one of the alternative safeguards against improvident legislation provided by the Constitution—the approval of the President or reconsideration by Congress pursuant to a procedure of special solemnity.

III

The ten executive precedents occurring in the administrations of Presidents Cleveland and Wilson are not persuasive. They disclose no long-settled and established practice. In the present case, before any controversy arose, the practice was assumed to be the contrary both by Congress and the President.

ARGUMENT

The argument for the petitioner seeks to establish, in effect, that there is a *hiatus* in the provisions of the Constitution [1] giving to the President ten days (Sundays excepted) within which to manifest his approval or disapproval of bills presented to him by the Congress. The importance of the opportunity for deliberation afforded by these provisions, this Court has repeatedly emphasized. *The Pocket Veto Case,* 279 U. S. 655, 677, 678;

[1] Clause 2, Section 7, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part I, p. 32), provides:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

Edwards v. *United States,* 286 U. S. 482, 493, 494. The terms of the Constitution and the Court's decisions make plain that *at least in every other situation* than the one here presented the opportunity exists unimpaired. The question presented is whether the situation now before the Court constitutes an exception.

(1) When both Houses of Congress remain in session for ten days after presentation of a bill, no question, of course, has ever arisen as to the President's power either to approve or to disapprove the bill within the ten days provided by the Constitution. Approval—the Constitution makes clear—may be manifested at any time within the designated period by the signing of the bill; disapproval, by its return with a written statement of objections to the House in which it originated. Failure of the President to take either of these affirmative courses of action results in the bill becoming a law without his approval.

(2) When one or both Houses has adjourned, it is no longer open to question that the President retains for the full ten-day period the power to *approve* the bill. That the President may sign a bill during a short recess of Congress was settled in *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423. And in *Edwards* v. *United States,* 286 U. S. 482, it was determined that his approval was likewise effective although it was given after the final adjournment of Congress.

(3) When both Houses have adjourned, whether with or without day, the President is similarly empowered to make his *disapproval* effective. In the case of a final adjournment this has never been disputed; the Constitution expressly saves the President from the necessity of cutting short his deliberation and declaring his disapproval at once in order to declare it at all. The bill—it says—is not to become a law wherever "the Congress by their Adjournment prevent its Return." In *The Pocket Veto Case,* 279 U. S. 655, the Court held that this language applies to adjournment merely for the session as well as to final adjournment of the Congress. That it applies also to shorter adjournments of the whole Congress, the opinion in that case leaves little doubt.

The argument here made is that the case of adjournment by the House in which a bill originated, while the other House remains in session, constitutes the single break in the uniformity of this constitutional scheme. Under such circumstances, it is urged, the power of the President to disapprove a bill at any time within the ten-day period is dependent upon the willingness of the originating House to remain in session. In its uncontrolled discretion, that House—if the argument be accepted—may adjourn for three days,[2] and so

[2] Section 5, Article I of the Constitution of the United States (U. S. C. A., Constitution, Part I, p. 31), provides: SEC. 5. Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a

reduce to seven days, as it is claimed to have done here, the opportunity for deliberation provided by the Constitution. If it may do so much, no reason appears why it may not by successive adjournments, commencing on the day the bill is presented, destroy the opportunity altogether—subject only to the possibility that the President's messenger may succeed in catching it in a brief moment of session before readjournment. Indeed, if it is the fact of session by the other House which is decisive, the argument goes to the extent of permitting the originating House to adjourn with the consent of the other for the entire period and so to prevent any exercise of the veto power whatever.

The asserted existence of such an exception to the general scheme of the Constitution is difficult to reconcile with the language which this Court has used in describing the nature and importance of the President's opportunity for deliberation. Thus, in *Edwards* v. *United States, supra,* the Court said (pp. 493, 494):

> Regard must be had to the fundamental purpose of the constitutional provision to provide appropriate opportunity for the President to consider the bills presented to

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Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day * * *.

Neither House, during the Session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

> him. The importance of maintaining that opportunity unimpaired increases as bills multiply. The Attorney General calls attention to the fact that at the time here in question, that is, between February 28, 1931, and noon of March 4, 1931, 269 bills were presented to the President for his consideration, 184 of which were presented to him during the last twenty-four hours of the session. No possible reason, either suggested by constitutional theory or based upon supposed policy, appears for a construction of the Constitution which would cut down the opportunity of the President to examine and approve bills merely because the Congress has adjourned. No public interest would be conserved by the requirement of hurried and inconsiderate examination of bills in the closing hours of a session, with the result that bills may be approved which on further consideration would be disapproved, or may fail although on such examination they might be found to deserve approval.

Again, in *The Pocket Veto Case, supra,* it was said (pp. 677, 678):

> * * * The faithful and effective exercise of this momentous duty necessarily requires time in which the President may carefully examine and consider a bill and determine, after due deliberation, whether he should approve or disapprove it, and if he disapproves it, formulate his objections for the consideration of Congress. To that end a specified time is given, after the bill

> has been presented to him, in which he may examine its provisions and either approve it or return it, not approved, for reconsideration. See *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, 455. *The power thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly.* And it is just as essential a part of the constitutional provisions, guarding against ill-considered and unwise legislation, that the President, on his part, should have the full time allowed him for determining whether he should approve or disapprove a bill, and if disapproved, for adequately formulating the objections that should be considered by Congress, as it is that Congress, on its part, should have an opportunity to re-pass the bill over his objections. [Italics supplied.]

The italicized sentence in *The Pocket Veto Case* had reference to the possibility of joint action by both Houses of Congress narrowing or cutting down the stated power of the President. More specifically, it referred to such action putting an end to the session. Such an adjournment is not likely to be taken as readily as a mere temporary recess. And joint action by both Houses is likely to be more responsible, better considered action, than action by either House alone. There is greater danger, accordingly, of encroachment upon the President's power of disapproval in the fashion here in question than in the fashion which the

Court was there considering. It would be strange if the Constitution, while guarding the President's power against the lesser danger, had left it exposed to the greater.

The argument that the power is so exposed depends upon a dual proposition. The Constitution provides two methods by which the President may make effective his disapproval of a bill—*first,* by returning it with his objections to the House in which it originated; and, *second,* where "the Congress by their Adjournment prevent its Return" by simply failing to sign it. Ordinarily these two methods complement each other, so that the unavailability of the one implies the availability of the other, and *vice versa.* In this special case, however, it is urged that neither was available. The President, it is said, could not return the bill to the Senate, where it originated, because the Senate by its adjournment had prevented its return. For this first aspect of the proposition, the petitioner relies upon *The Pocket Veto Case, supra.* Yet the President—the contention also is—could not make his disapproval effective by the second method, for while the return was "prevented" it was the Senate and not "the Congress" which prevented it. For this second aspect of the proposition, the petitioner relies upon a literalistic interpretation of the terms of the Constitution itself, supported by ten instances of executive interpretation during the administrations of President Cleveland and President Wilson.

Both aspects of the proposition advanced by the petitioner are presented by the case at bar. For the President, in the effort to make effective his disapproval of the bill, attempted to resort to both of the methods authorized by the Constitution. He sought to return the bill to the Senate by delivering it, together with a written statement of his objections, to the Secretary of the Senate. At the same time, in refusing to sign the bill, he made possible the operation of the alternative or complementary constitutional provision.

In the opinion of the Government, the petitioner is probably correct in concluding that the attempted return of the bill to the Senate was ineffectual. This we think is so, however, only if the other method of making effective the President's disapproval was operative. What is clear, above all, is that—by whatever method to be exercised—the power of veto existed, and existed with full opportunity for deliberate, unhurried consideration during the allotted period.[3]

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[3] As this Court said in *The Pocket Veto Case*, 279 U. S. at 675, 676, decisions of state courts construing state constitutional provisions—"due in some part to differences in phraseology or their application to the procedure of the state legislatures"—furnish no substantial aid in the determination of such questions as that here presented. We have been unable to find any such decision, however, adopting a construction which would have the effect here contended for of curtailing or nullifying the executive's power of veto. Compare *Harpending* v. *Haight*, 39 Cal. 189; *State* v. *South Norwalk*, 77 Conn. 257; *People* v. *Hatch*, 33 Ill. 9, 129, 134, 135; *Tuttle* v. *Boston*, 215 Mass. 57, 58–61; *Wood* v. *State*

I

The question first to be considered is whether, assuming that the return of the bill was "prevented" within the meaning of the Constitution, it was "the Congress by their Adjournment" which prevented it.

1. The petitioner urges the impossibility of a disjunctive interpretation of the collective noun "Congress" and the possessive adjective "their".[4]

Administrative Board, 255 Mich. 220, 227–233; *State ex rel. Putnam* v. *Holm*, 172 Minn. 162; *Soldiers Voting Power*, 45 N. H. 607, 610; *In re Public Utilities Board*, 83 N. J. L. 303; *Corwin* v. *Comptroller General*, 6 S. C. 390; *May* v. *Topping*, 65 W. Va. 656, cited by the petitioner, arose under special constitutional provisions relating to the item veto in appropriations.

In *In re Public Utilities Board*, *supra*, the Supreme Court of New Jersey, construing provisions substantially identical with those of the Federal Constitution, said (p. 312):

"The manifest purpose of the provision is to prevent the legislature, by an adjournment of more than five days, from putting it out of the power of the governor within that period to take advantage of his constitutional right—to fulfill the constitutional duty imposed upon him; and we consider the purpose manifest, notwithstanding that the language used in the constitution is 'unless the legislature', and so forth, instead of 'unless the house of origin', and so forth, for, as it is the adjournment of the house of origin alone, and not of both branches of the legislature, which prevents executive action, the necessary inference is that the words 'the legislature' are used in this connection as synonymous with 'the house of origin.'"

[4] The disjunctive use of both these terms is by no means uncommon. This Court in *Jurney* v. *MacCracken*, 294 U. S. 125, 148, referred to the action of the House of Representatives in punishing for contempt as an act of "Con-

He thus tenders an issue of grammar and the dictionary meaning of words. Even if the question could properly be decided solely upon this footing, the case for the petitioner would be at best uncertain.

The petitioner's first clear error lies in the significance which he attaches to the use of the plural in the adjective "their" and the verb "prevent". Brief for the Petitioner, 9, 10. He assumes that the antecedent of "their" is the "Senate and House of Representatives", the two parts of which—in the words of the Constitution—"the Congress of the United States * * * shall consist". Thus he interprets the provision in question as if it read, "unless the Senate *and* the House of Representatives, acting concurrently, by *their* Adjournment prevent" the return of the bill, and as if this meaning were to be contrasted with a meaning not intended, "unless the House in which the Bill shall have originated by *its* Adjournment prevents" the return of the bill.

It is well to attribute to the framers of the Constitution "careful diction" (Brief, 10), but it is necessary to remember that the diction is that of the eighteenth and not the twentieth century. In

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gress". Again, in *Kilbourn* v. *Thompson*, 103 U. S. 168, 194, a resolution of the House of Representatives was similarly described. The word "their" has likewise been interpreted on occasion in the disjunctive as well as the conjunctive sense. *Luce* v. *Harris*, 79 Pa. 432; *Lehman* v. *Lehman*, 215 Pa. 344; *Stegler's Exec.* v. *Stegler*, 77 Va. 163; *Pape* v. *Pape*, 67 Ind. App. 153.

referring to a collective body in the definite sense (*the* Congress, *the* Senate, *the* House of Representatives or *that* particular House), the Constitution invariably uses the plural, the connotation being, of course, to the members of the body. Accordingly, even if the Constitution had spoken of the particular House in which the bill originated, it would still have used the plural—"unless that House by their Adjournment prevent its Return". This is manifest from another sentence in the very section under consideration:

> If he approve he shall sign it [the bill], but if not he shall return it, with his Objections to that House in which it shall have originated, *who* shall enter the Objections at large on *their* Journal, and proceed to reconsider it.

The most that can be urged in the petitioner's favor from the use of the plural in the provision in question is that it is ambiguous. The connotation may be simply to the individual members of the Congress or it may be to the two Houses. In either case, since in an alternative phrasing the singular would in no event have been appropriate, the plural may be read with equal ease disjunctively as conjunctively.

There is, indeed, reason to believe that it may be so read with greater ease. A further aspect of constitutional usage in the application of pronominal adjectives to collective nouns must be taken into account. The singular "its" is used repeat-

edly in the Constitution with reference to a House of Congress.[5] Yet, as already noted, the plural also is used.[6]

The diction of the Constitution in the respect under discussion is evidently either the very opposite of "careful", in which event no inference can be drawn from it, or else it proceeds according to a practice of considerable nicety. The latter would appear to be the true case. For if the instances given be compared, it will be seen, as already suggested, that the plural is used when the reference is to a House in the definite sense and the

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[5] Section 5, Article I, of the Constitution of the United States (U. S. C. A. Constitution, Part I, p. 31) provides, *inter alia:*

"Each House shall be the Judge of the Elections, Returns and Qualifications of *its* own Members * * *.

"Each House may determine the Rules of *its* Proceedings, punish *its* Members for disorderly Behaviour * * *.

"Each House shall keep a Journal of *its* Proceedings * * *."

[6] Section 3, Article I, of the Constitution of the United States (U. S. C. A. Constitution, Part I, pp. 30, 31) provides, *inter adia:*

"The Senate of the United States shall be composed of two Senators from each State * * *.

"Immediately after *they* shall be assembled in consequence of the first Election, *they* shall be divided as equally as may be into three Classes * * *.

"The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless *they* be equally divided.

"The Senate shall chuse *their* other Officers * * *."

The last example, which is not unique, rules out any suggestion that the plural is employed when the emphasis is upon the individual members and the singular when the ref-

singular when the reference is to a House in the indefinite sense.

This practice raises the problem of the appropriate number when the desired reference is to more than one House—one or the other—in the indefinite sense. The natural solution would be to use the plural again, thus giving it a dual function. This appears to be precisely the usage which the Constitution follows. The single most striking instance of pronominal number in the Constitution affords the confirmation.

> Each House shall keep a Journal of *its* proceedings, and from time to time publish the same, excepting such parts as may in *their* Judgment require secrecy * * *

Manifestly the "Judgment" intended is not the concurrent judgment of both Houses. The sense, in current usage, would hence have been the same if the singular "its" had been used, as it was in the clause immediately preceding. Nor is explanation possible, as already pointed out,[7] on the ground that the journal is that of the collectivity but the judgment that of the individual members. The word "their" signifies unmistakably not one House but either the one House or the other, depending upon whose proceedings it is the publication of which is in question.

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erence is to the collectivity. The individual members of the Senate do not have officers, nor do they have a journal (see p. 17, *supra*).

[7] See note 6, *supra*.

The clause, "unless the Congress by their adjournment prevent its return", can similarly be read as referring to the adjournment of either one of the component parts of Congress, or of the concurrent adjournment of both parts, depending likewise upon whose adjournment is in question.

The meaning thus given to the provisions under discussion is a natural and consistent one. The Congress, says the Constitution, "shall consist of a Senate and a House of Representatives." The Constitution gives to the Congress so established certain powers to be exercised concurrently by both Houses and other powers to be exercised separately, by one or the other House. With respect to adjournment, action in certain circumstances is to be concurrent and in others separate—sometimes with and sometimes without the consent of the other. In all cases the action appropriate to the circumstances may appropriately be spoken of as action of the Congress. If the phrase, "unless the Congress by their Adjournment prevent", be understood in this inclusive sense, there is no difficulty in concluding, in the case at bar, that "the Congress by their Adjournment prevent[ed the] Return" of the bill when the only House to which it could have been sent, exercising a power authorized by Article I to be exercised separately, rendered itself incapable of receiving it.

2. So far as the answer by way of grammar falls short of meeting the petitioner's contention conclusively, it does so only because the question pre-

sented is not one of grammar. It is a question of government, a question accordingly to be decided with regard to the overriding intention of the Constitution to establish a rational and workable method of subjecting projected legislation to executive scrutiny.

Viewed in this light, there can be no doubt, we think, that whenever an adjournment "prevents" the return of a bill within the meaning of the Constitution, that adjournment is equally one of "the Congress", within the same meaning, whether it be an adjournment of both Houses acting concurrently, an adjournment of one House acting with the consent of the other, or an adjournment of a single House acting alone.

The case of an adjournment for more than ten days by the House of origin, with the consent of the other, reveals decisively the fallacy of the petitioner's contention. If such an adjournment were to have the effect here urged, Congress would possess power at any time to nullify the President's power of veto—contrary to the plainest intention of the Constitution. Yet the petitioner's argument, if valid in the case at bar, is valid also in the case supposed. It is true that an adjournment by one House with the consent of the other might be said to be action of "the Congress" within the meaning which petitioner seeks to give that term. But still it would not be Congress "by their adjournment" which had prevented the re-

turn of the bill, but only Congress by the adjournment of a single House.

Extensible or not, the petitioner's view even as confined to the situation presented in the case at bar is destructive of the relationship between the Executive and Legislature contemplated by the Constitution. The Constitution contemplates that the President shall have ten days, and not seven, within which to determine whether to approve or disapprove a bill.[8] Not only would the petitioner's view, if accepted, in effect bring about a reduction of the period provided, but it would necessitate the exercise of excessive diligence by the President if he desired to veto a bill within even this reduced period. This Court's measured statement in *The Pocket Veto Case, supra* (p. 677) may here appropriately be repeated:

> The power [of veto] thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly.

Any other doctrine would be difficult to justify. The powers of the executive and the legislative branches were intended to function harmoniously.

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[8] See *Farrand's Record of the Federal Convention*, Vol. 2, Journal, pp. 295, 296, Wednesday, August 15, 1787:

"It was moved and seconded to strike out the word 'seven' and insert the words 'ten (Sundays excepted)' in the 13th sect. of the 6 article * * * which passed in the affirmative [Ayes 9, Noes 2]. On the question to agree to the 13th sect. of the 6 article as amended—it passed in the affirmative." Only New Hampshire and Massachusetts voted "no." See also *ibid*, p. 302.

In the respect here in question they admit of an interpretation which will permit them so to function. By that interpretation nothing will be taken away from the usual and the accepted powers of either, and nothing will be added. To carve out an exception whereby Congress would be enabled, on occasion, to destroy or impair the President's usual power of veto would be to deny accepted canons of constitutional interpretation and to subtract much of the meaning from this Court's express declarations concerning the scope of the power.

What has been said is sufficient to dispose of the petitioner's further suggestion (Brief, 13–17) that the veto power, "being in derogation of legislative power", is at all times to be narrowly construed. If the point in question were the possession under special circumstances of a power wider than that understood and recognized in the generality of cases, the suggestion might have force. Under the circumstances at bar, it is in the teeth of this Court's repeated affirmations of the existence of an effective veto power. It is in the teeth also of the expressed determination of the delegates to the Constitutional Convention to endow the Executive with such a power. Elliot's *Debates,* Vol. 5, pp. 151–155, 344–348; Mason, *Veto Power,* p. 20; *Federalist,* No. 73, pp. 337–340; *Farrand, ibid,* Vol. 2, pp. 585–587; Story, *Constitution of the United States,* 4th ed., pp. 622–631; Warren, *The Making of the Constitution,* pp. 185–187, 453–463.

II

The petitioner's conclusion that the effort of the President to return the bill to the Senate was ineffectual is rested shortly (Brief, 5, 6) upon this Court's holding in *The Pocket Veto Case, supra,* at 682, that "the 'House' to which the bill is to be returned, is the House in session." While the conclusion of the petitioner is probably correct, the point—in view of its importance—ought not to pass without consideration.

This Court in *The Pocket Veto Case* was concerned not with an adjournment of a single House for a period constitutionally limited to three days but with an adjournment of a regular session of Congress approximately five months before the prescribed date for the meeting of the next session. It was considering the effect of delivery of a bill with the President's objections to a permanent officer of the House, during such an adjournment, not in a case in which the President had attempted such delivery but in a case in which it was asserted that a bill had become law because of his failure to make the attempt.

In support of its conclusion that such a delivery could not have been made and that an adjournment of a regular session of Congress accordingly prevented the return of the bill, the Court gave the following reasons (pp. 684, 685):

> Manifestly it was not intended that, instead of returning the bill to the House itself, as

required by the constitutional provision, the President should be authorized to deliver it, during an adjournment of the House, to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks or perhaps months—not only leaving open possible questions as to the date on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid. In short, it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown by the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, and not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return of the bill to the House had expired.

Some of these reasons may have application to the case at bar. Others have not. If the Secretary of the Senate is wholly without authority to receive the bill and make a legislative record thereof, or if such authority could not constitutionally be given even in a situation not offending the substance of the constitutional purpose, then further discussion of the question is foreclosed. It is to be noted, however, that the first point, as to authority in fact, was dealt with by the Court only as a reason "aside from" the principal constitutional reason (p. 684); and that there are strong grounds for concluding that the authority does exist wherever it can be constitutionally conferred. See Argument of Amicus Curiae, 279 U. S. 666, 669–671. The original delivery of a bill to the President, of course, is frequently constructive. If then the primary objection in *The Pocket Veto Case* was a constitutional one, a different conclusion may well be reached in the case at bar, for the applicable constitutional considerations differ materially. There is here no danger of keeping a bill for an uncertain period "in a state of suspended animation", contrary to the design of the Constitution that its status be readily ascertainable. No possibility is involved of material delay in determining the fact or the date of delivery. Nor will Congress be prevented from proceeding immediately, as the Constitution intended, with its reconsideration of the bill.

Much of the petitioner's argument in the fourth section of his brief (pp. 13–17) is persuasive, if at

all, only of the view that the return of the bill to by the President was effectual and that Congress was not disabled from proceeding to its reconsideration. For "derogation of legislative power", if any, would result from such disability, not from upholding the power of the President to exercise his veto with the same opportunity for deliberation as in ordinary cases. Where a session of Congress is interrupted only by a brief adjournment of one House for a period to which the Constitution itself sets a maximum, it may well be thought that the exceptional power of final non-approval [9] ought not to exist, and that the power of disapproval should be checked, as in ordinary cases, by an opportunity for the legislative branch to consider the formulated objections of the Executive and by a special majority to override them.

The petitioner's positions upon the point here in question and that previously considered (pp. 15–23, *supra*) will be seen upon examination to be self-defeating. The veto provisions of the Constitution are designed to afford alternative safeguards against the enactment of improvident legislation.

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[9] The Court in *The Pocket Veto Case* referred (p. 676) to "a silent and 'absolute veto', that is, a so-called pocket veto, which neither discloses his [the President's] objections nor gives Congress an opportunity to pass the bill over them." As the Court pointed out (pp. 676–679), the term "pocket veto" is inapt to the extent that it fails to recognize that the failure of the bill may be attributable as well to the President's lack of time for examination and deliberation while Congress is in session, as to affirmative disapproval.

Where the President approves a bill—or, more accurately, where after full opportunity for deliberation he fails to disapprove it—the bill is to become a law. In the alternative, despite the President's disapproval, it is to become a law where the Congress by a prescribed and specially solemn procedure has reviewed the President's objections and determined that they should be overridden. When such reconsideration is clearly impossible, the Constitution declares expressly that the absence of the first safeguard shall be decisive—the failure of the President to give his approval results in the bill not becoming a law. Whether this result shall follow even though the impediment to reconsideration by Congress is the slight one of a temporary and limited adjournment by a single House, or whether Congress remains empowered to reconsider the bill, is a difficult question. That, however, is merely a question as to the availability of the alternative constitutional safeguard. The petitioner's contention, on the other hand, is that under these special circumstances the bill is to become a law in the absence of either of the safeguards provided by the Constitution. The question thus presented, we submit, is not one of difficulty. The contention is contrary to the plain intendment of the Constitution.

III

The petitioner cites (Brief, 17–21) in support of his contention nine instances of executive inter-

pretation occurring in the administration of President Cleveland and one occurring in the administration of President Wilson. The precedents are not persuasive. Four points are to be noted concerning them. Nine of the instances antedated all the decisions of this Court concerning the scope of the veto power and the tenth antedated all but one (*La Abra Silver Mining Co.* v. *United States, supra*). All of them are reconcilable only with difficulty, if at all, with those decisions. In none of the instances, moreover, does it appear that the President affirmatively disapproved the bill. Certainly he did not evidence his disapproval, and the question here involved as to whether the power of veto can be curtailed by the adjournment of a single House accordingly was not presented. Nor can it be said that the instances in question disclose any long-settled or established practice. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 473; *United States* v. *Minnesota*, 270 U. S. 181, 205; *The Pocket Veto Case*, 279 U. S. 655, 689. Where instances which might constitute precedents seldom occur, and are not subjected to the scrutiny of successive executive officers or of the courts, their value is minimized. So far was the practice in this case from being established in the petitioner's favor that it was assumed both by Congress and the President to be the contrary. The Senate, when the President's disapproval was communicated to it, took cognizance thereof and referred

the bill to the Claims Committee (R. 3). No further action was taken; and the bill never was treated as having become law. Finally, the ultimate question, as the petitioner himself points out (Brief, 21), is not what Congress and the President thought, but what the Constitution provides. The Constitution does not contemplate that the President's power of veto can be curtailed, or the opportunity for deliberation in advance of its exercise cut short, in such fashion as the contention of the petitioner would permit.

CONCLUSION

We respectfully submit that the decision of the court below is correct and that its judgment should be affirmed.

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OCTOBER 1937.

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SUPREME COURT OF THE UNITED STATES.

No. 37.—October Term, 1937.

David A. Wright, Petitioner,
vs.
The United States.

On Writ of Certiorari to the Court of Claims.

[January 17, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The question is whether Senate Bill 713, 74th Congress, 1st session, which was passed by both Houses of Congress, became a law.

The bill was presented to the President of the United States on Friday, April 24, 1936. It had originated in the Senate. On Monday, May 4, 1936, the Senate took a recess until noon, Thursday, May 7, 1936. The House of Representatives remained in session. On May 5, 1936, the President returned the bill with a message addressed to the Senate setting forth his objections. The bill and message were delivered to the Secretary of the Senate. When the Senate reconvened on May 7, 1936, the Secretary advised the Senate of the return of the bill and the delivery of the President's message.[1] On the same day the President of the Senate laid before

[1] This communication was as follows:

"United States Senate.
Washington, May 7, 1936.

Hon. John N. Garner,
President of the Senate.

My dear Mr. President:

On Friday, April 24, 1936, the Committee on Enrolled Bills of the Senate presented to the President of the United States the enrolled bills (S. 713) granting jurisdiction of the Court of Claims to hear the case of David A. Wright, and (S. 929) for the relief of the Southern Products Co., which had passed both Houses of Congress and been signed by the Speaker of the House of Representatives and the President of the Senate.

The Senate, at 3:25 p. m. Monday, May 4, 1936, took a recess until 12 noon on Thursday, May 7, 1936.

During the interim the President of the United States sent by messenger two messages addressed to the Senate, each dated May 5, 1936, giving his reasons for not approving, respectively, Senate bill 713 and Senate bill 929. The Senate not being in session on the last day which the President had for the return of these bills under the provisions of the Constitution of the United States, in order to protect the interests of the Senate, so that it might have the opportunity to reconsider the bills, I accepted the messages, and I now present to you the President's veto messages, with the accompanying papers, for disposition by the Senate.

Sincerely yours,
Edwin A. Halsey,
Secretary of the Senate".

it the Secretary's letter and the message of the President of the United States. The message was read and with the bill was referred to the Senate Commitee on Claims. No further action was taken.

The bill granted jurisdiction to the Court of Claims to rehear and adjudicate petitioner's claim against the United States. Accordingly on September 14, 1936, petitioner presented his petition to the Court of Claims. The Government opposed the petition upon the ground that the bill had never become a law and the Court of Claims denied the petition. In view of the importance of the question certiorari was granted. 301 U. S. 681.

The applicable provisions of the Constitution are found in Article I, Section 7, Paragraph 2, which provides:

"Every Bill which shall have passed the House of Representatives and the Senate, shall before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law".

1. The first question is whether "the Congress by their adjournment" prevented the return of the bill by the President within the period of ten days allowed for that purpose.

"The Congress" did not adjourn. The Senate alone was in recess. The Constitution creates and defines "the Congress". It consists "of a Senate and House of Representatives". Art. I, Sec. 1. The Senate is not "the Congress".

The context of the clause itself points the distinction. It speaks of the "House of Representatives" and of the "Senate", respectively. It speaks of the return of the bill, if the President does not approve it, "to that House in which it shall have originated"; of

reconsideration by "that House", and, in case two thirds of "that House" agree to pass the bill, of sending it together with the President's objections to the "other House" and, if approved by two thirds of "that House", the bill is to become a law. Provision is made for the taking of the votes of "both Houses" and for the recording of the names of those voting for and against the bill on the Journal "of each House respectively".

Then, after this precise use of terms and careful differentiation, the concluding clause describes not an adjournment of either House as a separate body, or an adjournment of the House in which the bill shall have originated, but the adjournment of "the Congress". It cannot be supposed that the framers of the Constitution did not use this expression with deliberation or failed to appreciate its plain significance. The reference to the Congress is manifestly to the entire legislative body consisting of both Houses. Nowhere in the Constitution are the words "the Congress" used to describe a single House.

To disregard such a deliberate choice of words and their natural meaning would be a departure from the first principle of constitutional interpretation. "In expounding the Constitution of the United States", said Chief Justice Taney in *Holmes* v. *Jennison*, 14 Pet. 540, 570, 571, "every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood". See, also, *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 333, 334; *Ogden* v. *Saunders*, 12 Wheat. 213, 316; *Myers* v. *United States*, 272 U. S. 52, 151; *Williams* v. *United States*, 289 U. S. 553, 572, 573.

The argument addressed to the word "their" in the phrase "the Congress by their adjournment", is futile. The argument is that the use of the plural would not be unusual or inappropriate if the reference were to a single House. There is no question that both singular and plural forms are used in the Constitution with reference to each House separately. See Article I, Section 3, Paragraphs 2, 4, 5, 6; Article I, Section 5, Paragraphs 1, 2, 3. The plural is

used in the phrase "their Journal" in the paragraph under consideration. But the question is not whether the use of the plural is inappropriate in referring to a single House or its members. It it sufficient to say that there is certainly no inappropriateness in the use of the plural in relation to "the Congress" as composed of both Houses, and that use in no way changes the significance of that term.

The phrasing of the concluding clause is entirely free from ambiguity and there is no occasion for construction.

2. The argument to the contrary rests upon the premise that a bill cannot be returned by the President to the House in which it originated when that House during the session of Congress is in recess, and hence that the concluding elause of Paragraph 2 of Section 7 of Article I, referring to an adjournment by the Congress, should be rephrased by judicial construction in order to deal with that situation. We think that the premise is faulty and the rephrasing inadmissible.

Paragraph 4 of Section 5 of Article I provides:

"Neither House, during the Session of Congress shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting".

It will be observed that this provision is for a short recess by one House without the consent of the other "during the Session of Congress". Plainly the taking of such a recess is not an adjournment by the Congress. The "Session of Congress" continues.

Here, the recess of the Senate from May 4th to May 7th was during the session of Congress and under that provision. In returning the bill to the Senate by delivery to its Secretary during the recess there was no violation of any express requirement of the Constitution. The Constitution does not define what shall constitute a return of a bill or deny the use of appropriate agencies in effecting the return.

Nor was there any practical difficulty in making the return of the bill during the recess. The organization of the Senate continued and was intact. The Secretary of the Senate was functioning and was able to receive, and did receive, the bill. Under the constitutional provision the Senate was required to reconvene in not more than three days and thus would be able to act with reasonable promptitude upon the President's objections. There is no greater difficulty in returning a bill to one of the two Houses when

it is in recess during the session of Congress than in presenting a bill to the President by sending it to the White House in his temporary absence. Such a presentation is familiar practice. The bill is sent by a messenger and is received by the President. It is returned by a messenger, and why may it not be received by the accredited agent of the legislative body? To say that the President cannot return a bill when the House in which it originated is in recess during the session of Congress, and thus afford an opportunity for the passing of the bill over the President's objections, is to ignore the plainest practical considerations and by implying a requirement of an artificial formality to erect a barrier to the exercise of a constitutional right.

These practical considerations were well put by Mr. Hatton W. Sumners in his argument as *amicus curiae* on behalf of the Committee on the Judiciary of the House of Representatives in the *Pocket Veto Case,* 279 U. S. 655. He said:

"There is no language in the provision governing this passing of bills between the President and Congress, or any recognized rule of construction which, while permitting the Congress in the first instance to send bills to the President by a messenger, as is done without question, and the President to receive such bills through an appropriate agent even when himself absent from his office; and the President, though he may be away from the Capital, at the time returning the bill by messenger to the Congress, though the Constitution declares 'he', the President, shall return it, which would prevent the House of origin from receiving these same bills through a proper agent if that House were engaged in other business or temporarily absent from their Chambers. It is against all reason and every recognized rule of construction, when the avoidance of unnecessary delay is so clearly manifest in the provision sought to be construed, that a construction should be superimposed which would make for delay regardless of every desire and of every effort of the President and of the Congress in the situation indicated".

And referring to the provision of the Constitution above quoted as to adjournments by either House for not more than three days during the session of Congress, he said:

"In such a situation what is to occur? Is the bill to become a law despite the objections of the President? The Congress has not adjourned, and yet the President cannot make return of the bill to the House of its origin in session because it is not in session. Is the bill to die with the Congress in existence, possibly the House of origin only having adjourned earlier than usual on the last day

permitted for the return of the bill? Is there no rational construction of the Constitution possible which will make effective all the safeguards with regard to legislation established in the Constitution, and yet make operative under every circumstance, the general plan set up by the Constitution?''

And, again, with respect to the agencies of the Houses of Congress, Mr. Sumners observed that ''The Houses of Congress have officers and agents of great power and responsibility who act in their stead, and who are constantly in their places when the Houses are in session, and when they are not in session''. He found ''nothing in the Constitution which denies the right to the use of these agents in effecting the return of objected-to bills''. He added that

''a rule of construction or of official action which would require in every instance the persons who constitute the Houses of Congress to be in formal session in order to receive bills from the President would also require the person who is President personally to return such bills. . . . . .

''The right of constructive delivery is necessarily not only to facilitate legislative procedure, prevent delay, and to hold the President's powers within the limits imposed by the Constitution, but it is also necessary in order to hold the Congress within proper bounds by preventing bills to which the President may object from becoming law without reconsideration by the Congress.

''The adjournment of a House for not more than three days, without the consent of the other House is not an adjournment of Congress.

''If the Senate should be in executive session, on a matter of the highest public importance, refusing to be interrupted, on the last day of the period in which return may be made, that would not even be an adjournment of one House of the Congress; and yet return could not be made if constructive delivery is not permitted.

''It could not be held that Congress was adjourned when the Senate was in executive session performing its constitutional duty, and the other House in actual session. The sensible thing to do in such a case, would be for the messenger of the President, finding himself unable to make delivery to the Senate, to make the delivery to the Secretary of the Senate. There is nothing in the Constitution to prohibit that being done''.

The absence of any practical obstacle to the return of a bill when a House is in temporary recess during the session of the Congress is illustrated by what was done in this instance The Senate was in recess from May 4th to noon of May 7th. The President's time for consideration expired on May 6th. He delivered the bill with his objections to the Secretary of the Senate on May 5th. The

Secretary presented the bill with the President's objections to the President of the Senate on May 7th and on that day the bill and the objections were laid before the Senate and were referred to the appropriate committeee. The fact that Mr. Sumners' contention in the *Pocket Veto Case* was unavailing with respect to the effect of an adjournment of the Congress at the close of its first regular session, in no way detracts from the pertinence and cogency of these observations as addressed to the situation which is now presented.

3. The chief, if not the sole, reliance for the argument that the bill could not be returned by the President during the Senate's recess is our decision in the *Pocket Veto Case, supra.* We do not regard that decision as applicable for two reasons: (1) the present question was not involved, and (2) the reasoning of the decision is inapposite to the circumstances of this case.

In the *Pocket Veto Case,* the Congress had adjourned. The question was whether the concluding clause of Paragraph 2 of Section 7 of Article I was limited to a *final* adjournment of the Congress or embraced an adjournment of the Congress at the close of the first regular session. The Court held that the clause was not so limited and applied to the latter. In interpreting the word "adjournment", and in referring to other provisions of the Constitution using the word "adjourn", the Court was still addressing itself to a case where there had been an adjournment by the Congress. The Court did not decide, and there was no occasion for ruling, that the clause applies where the Congress has not adjourned and a temporary recess has been taken by one House during the session of Congress. Any observations which could be regarded as having a bearing upon the question now before us would be taken out of their proper relation. The oft-repeated admonition of Chief Justice Marshall "that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used", and that if they go "beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision", has special force in this instance. *Cohens* v. *Virginia,* 6 Wheat. 264, 399.

In the *Pocket Veto Case* the Court expressed the view that the House to which the bill is to be returned "is the House in session", and that no return can be made to the House when it is not in

session as a collective body and its members are dispersed. But that expression should not be construed so narrowly as to demand that the President must select a precise moment when the House is within the walls of its Chambers and that a return is absolutely impossible during a recess however temporary. Such a conclusion, as we shall presently endeavor to show, would frustrate the fundamental purposes of the constitutional provision as to action upon bills. The Court in the *Pocket Veto Case* was impressed with the impropriety of a delivery of the bill by the President during a period of adjournment "to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks or perhaps months,—not only leaving open possible questions as to the day on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid". "In short", said the Court, "it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown on the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return to the House had expired". *Id.*, pp. 684, 685.

These statements show clearly the sort of dangers which the Court envisaged. However real these dangers may be when Congress has adjourned and the members of its Houses have dispersed at the end of a session—the situation with which the Court was dealing—they appear to be illusory when there is a mere temporary recess. Each House for its convenience, and during its session and the session of Congress, may take, and frequently does take, a brief recess limited, as we have seen, in the absence of the consent of the other House, to a period of three days. In such case there is

no withholding of the bill from appropriate legislative record for weeks or perhaps months, no keeping of the bill in a state of suspended animation with no certain knowledge on the part of the public whether it was seasonably delivered, no causing of any undue delay in its reconsideration. When there is nothing but such a temporary recess the organization of the House and its appropriate officers continue to function without interruption, the bill is properly safeguarded for a very limited time and is promptly reported and may be reconsidered immediately after the short recess is over. The prospect that in such a case the public may not be promptly and properly informed of the return of the bill with the President's objections, or that the bill will not be properly safeguarded or duly recorded upon the journal of the House, or that it will not be subject to reasonably prompt action by the House, is we think wholly chimerical. If we regard the manifest realities of the situation, we cannot fail to see that a brief recess by one House, such as is permitted by the Constitution without the consent of the other House, during the session of Congress, does not constitute such an interruption of the session of the House as to give rise to the dangers which, as the Court apprehended, might develop after the Congress has adjourned.

4. The constitutional provisions have two fundamental purposes; (1) that the President shall have suitable opportunity to consider the bills presented to him, and (2) that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are the requisite votes. *Edwards* v. *United States,* 286 U. S. 482, 486. We should not adopt a construction which would frustrate either of these purposes.

As to the President's opportunity for consideration, we have held that he may still approve bills and that they will become laws, if he acts within the time allotted for that purpose, although Congress meanwhile has adjourned. *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423; *Edwards* v. *United States, supra.* It is to safeguard the President's opportunity that Paragraph 2 of Section 7 of Article I provides that bills which he does not approve shall not become laws if the adjournment of the Congress prevents their return. *Edwards* v. *United States, supra.*

Where the President does not approve a bill, the plan of the Constitution is to give to the Congress the opportunity to consider

his objections and to pass the bill despite his disapproval. It is for this purpose that the time limit for return is fixed. This opportunity is as important as that of the President. But if the return of a bill is impossible during a temporary recess of a House while Congress is in session, either the President may be obliged to cut short the time for his consideration so as to be sure to get his objections before the House while it is within the walls of its Chambers, or, if the President takes the allotted time and attempts to return the bill during the recess, his objections will either be unavailing or the Congress will be denied opportunity to pass upon them. If, as we think, the concluding words of Paragraph 2 of Section 7 are inapplicable then, as Congress has not adjourned, the bill, if not deemed to have been returned, will become a law despite the President's disapproval. Or, if that clause were deemed applicable and the return of the bill be considered to have been prevented by the recess, the bill would not become a law and Congress, although in session, would not be able to pass the bill over the President's objections.

The extremely technical character of the argument which would make impossible the return of a bill because a House has taken a temporary recess is manifest. Suppose the President, who is clearly entitled to his ten days for consideration, sends the bill to the House in which it originated with his objections on the afternoon of the tenth day, but that House has adjourned at noon on that day until the following morning. Then, on the argument now advanced as to the construction of the concluding clause of Paragraph 2 of Section 7, the bill would not become a law and the objections of the President would operate practically as an absolute veto although the Congress was in session and ready to consider his objections. Or if that result does not follow, in the view that the clause does not apply because Congress has not adjourned, then, if the bill is not regarded as returned, it becomes a law although the President has shown his disapproval within the ten days. These difficulties disappear if we dispense with wholly unnecessary technicalities as to the method of return and give effect to realities.

We agree with the Government that the precedents of executive action which have been cited are not persuasive. The question now raised has not been the subject of judicial decision and must be resolved not by past uncertainties, assumptions or arguments, but by the application of the controlling principles of constitutional interpretation.

We are not impressed by the argument that while a recess of one House is limited to three days without the consent of the other House, cases may arise in which the other House consents to an adjournment and a long period of adjournment may result. We have no such case before us and we are not called upon to conjecture as to the nature of the action which might be taken by the Congress in such a case or what would be its effect.

We hold that where the Congress has not adjourned and the House in which the bill originated is in recess for not more than three days under the constitutional permission while Congress is in session, the bill does not become a law if the President has delivered the bill with his objections to the appropriate officer of the House within the prescribed ten days and the Congress does not pass the bill over his objections by the requisite votes. In this instance the bill was properly returned by the President, it was open to reconsideration in Congress, and it did not become a law.

The judgment is

Affirmed.

Mr. Justice CARDOZO took no part in the decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 37.—October Term, 1937.

David A. Wright, Petitioner,
vs.
The United States.
} On Writ of Certiorari to the Court of Claims.

[January 17, 1938.]

Mr. Justice Stone.

I agree that the legislation now in question did not become a law, not, as the Court holds, because the bill vetoed by the President was returned to the Senate within the ten-day period or to any person authorized to receive the bill in its behalf, but because the Senate by its adjournment prevented the return and thus called into operation the provision that the bill "shall not be a Law" where adjournment prevents its return to the house in which it originated, within the ten days allowed to the President to sign or disapprove it.[1]

The reasons assigned by the Court for its conclusion seem to me to have no application to the case now before us, and leave in confusion and doubt the meaning and effect of the veto provisions of the Constitution, the certainty of whose application is of supreme importance.

Notwithstanding the cogently reasoned ruling of a unanimous court in *The Pocket Veto Case*, 279 U. S. 655, 682, that the

[1] Article I, § 7, Cl. 2, of the Constitution reads as follows:
"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

"House" to which a bill is to be returned by the President means a house in session, we may assume for present purposes that each house of Congress, by appropriate action, may constitutionally confer upon its secretary, clerk, or some other officer, authority to receive a bill returned to it by the President. But it does not appear that any such authority has ever been conferred on the secretary of the Senate, or that he has hitherto assumed to act in that capacity. In *The Pocket Veto Case* this Court held that in 1926 it had not; and the Senate has since taken no step in that direction, perhaps because of our dictum in that case that such action would be unconstitutional.

The houses of Congress, being collective bodies, transacting their routine business by majority action, are capable of acting only when in session and by formal action recorded in their respective journals, or by recognition, through such action, of an established practice. Since the foundation of the government it has been the settled usage of both houses of Congress to receive messages from the President and bills disapproved and returned by him, when in session. It does not appear that in the past the secretary of the Senate or any other person has assumed to act for either house in receiving a bill returned by the President, and in one recorded instance the secretary of the Senate and its President declined so to act.[2] There has been no action and no usage of either house recognizing the existence of such authority in any one. *The Pocket Veto Case, supra,* 682 *et seq.*

The secretary of the Senate is appointed by that body to serve at its pleasure, and his duties are prescribed by the Senate rules. They give no hint that among these duties is the important function of acting as the Senate in the receipt of bills returned to it by the President during the ten-day period, or retaining them in custody pending its reassembly when the return is during an adjournment. Not only have both houses of Congress failed to designate any person to receive bills returned to them by the President, but

[2] On May 19, 1888, President Cleveland attempted to return a bill to the Senate during an adjournment, by tendering it to the secretary and to the President of the Senate. Both officers rejected the tender, "claiming that the return of said bill and the delivery of said message could only properly be made to the Senate when in actual session." President Cleveland's message, Senate Journal, 50th Cong., 1st Sess.

in one instance they explicitly refused to take such action when it was proposed.[3]

The conclusion seems inescapable that whatever constitutional power the Senate and House may possess to designate an officer to receive in their behalf bills returned by the President, they have not exercised it; the Constitution, which directs that bills shall be returned to the house in which they originate, has made no such designation, and neither the Constitution nor any statute, rule or usage has indicated any person who could so act, or prescribed for any one duties embracing such a function.

In such circumstances delivery of a bill to the secretary of the Senate during its adjournment would seem to be no more a compliance with the constitutional requirement than would its deposit by the President's messenger with the sergeant-at-arms, a doorkeeper, or any other person not clothed with authority or charged with official duty in the premises, who might be induced to receive the bill and undertake to bring it to the attention of the Senate upon reassembly.[4]

Doubts as to the scope and effect of the rule now announced by the Court are multiplied by the intimation that a different rule may be applied in the case of adjournment of either house of Congress, with the consent of the other, for more than three days, and that the present decision can, in some way not disclosed, be distinguished from our ruling in *The Pocket Veto Case,* where the return of a bill to the Senate was held to have been prevented by the adjournment of the Senate, pursuant to concurrent resolution, from July 3rd to November 10th, the House having at the same time adjourned *sine die.* But such an intimation can rest on nothing more substantial than our unwillingness to face the obvious consequences of what is now decided. If it be said that an essen-

[3] In 1868 a bill reported by the Senate Judiciary Committee and passed by majority vote of the Senate, provided for a return of a bill to a house not sitting by delivery of it at the office of the secretary of the Senate or of the clerk of the House, as the case might be. Strong opposition to the bill developed in Senate debate, the bill was not reported out of the Judiciary Committee of the House, and failed of passage. The Pocket Veto Case, *supra,* 686 *et seq.*

[4] The fact that the Senate has taken pains to confer express authority in some instances, by formal resolution, Gilfry, Precedents, 226, 462, by rule, Senate Manual, 1936, 5, 8, 12, 36, or by standing order, *id.* at 128 *et seq.,* persuades that the important power to receive a bill would not be conferred *sub silentio.*

tial difference between the present case and *The Pocket Veto Case* lies in the fact that here the President delivered the bill with his veto message to the secretary of the Senate, and that there he retained it without signing, then the rule which is now announced will, for all practical purposes, expire with its birth. We can hardly assume that a President would invite further Congressional action by a return of a bill with his veto to a secretary or other officer of the house concerned, during its adjournment, if by retention of the bill without signing, he could make the veto absolute.

Again, if it be said that a distinction is to be drawn between adjournment of one house for three days and longer adjournments taken with the concurrence of the other house, no plausible reason can be advanced for saying that the secretary or any other officer of the Senate possesses authority to receive returned bills during a three-day adjournment which he does not possess during a four-day or longer adjournment during a session of Congress. In *The Pocket Veto Case* the Senate adjourned during a session of Congress for four months, the House consenting, but the ten days allowed for consideration of the bill by the President expired the day after adjournment. If the decision in that case is to stand with this it can only be because the secretary in the former lost on the day after adjournment an authority which he retained for a day after adjournment in the latter. If lost, it was either because the adjournment was for longer than three days and was thus one which could not be effected without a concurrent resolution, or because the other house had not remained in session. Such distinctions find as little support in Constitution, laws and Congressional practice, and in reason, as does the proposition that the secretary of the Senate is, by virtue of his appointment as such, clothed with authority to receive in its behalf bills returned by the President.

If in *The Pocket Veto Case* the secretary of the Senate, where the bill originated, had authority after adjournment during the session, to receive it in behalf of the Senate, the adjournment did not prevent the return by the President, and the bill, upon his failure to sign or return it, became law by virtue of the constitutional provision just as did some 173 other bills which, until this moment, have been regarded as dead letters, as they were declared

to be in *The Pocket Veto Case, supra,* 691.[5] If the Court was wrong on that point, its decision was wrong, and in the interests of a definite and precise constitutional procedure in a field where definiteness and precision are of paramount importance, it should now be frankly overruled.

If I am wrong in my conclusion that the President did not in this case return the bill to the Senate by returning it to its secretary during adjournment, then adjournment did not prevent its return, the President's veto became effective, and there is no occasion for the Court to indulge in an academic discussion of what may in other circumstances be the effect of an adjournment alone of the house in which a bill originates, which actually prevents such a return. The pronouncement now made that the President may be so deprived of the veto power ought to be avoided not only because, in my opinion, it is an erroneous interpretation of the Constitution which may have grave consequences, but because it is unnecessary to the decision. If the experience of one hundred and fifty years of constitutional interpretation has taught any lesson, it is the unwisdom of making solemn declarations as to the meaning of that instrument which are unnecessary to decision. They can serve no useful purpose and their only effect may be to embarrass the Court when decision becomes necessary. *O'Donoghue* v. *United States,* 289 U. S. 516, 550; *Humphrey's Executor* v. *United States,* 295 U. S. 602, 626-627. The declaration now made, for the first time,

[5] A memorandum prepared in the office of the Attorney General and transmitted by the President to Congress in 1927, H. Doc. No. 493, 70th Cong., 2d Sess., cites more than 400 bills and resolutions which were passed by Congress and submitted to the President less than ten days before final or interim adjournment of Congress, which were not signed by the President or returned with his disapproval. Of these, 119 were instances in which the adjournment was for a session of Congress as distinguished from its final adjournment. None of these bills or resolutions were placed upon the statute books or treated as having become a law. No attempt appears to have been made to enforce them in the courts, except the law involved in The Pocket Veto Case. It does not appear that in any of these instances either house of Congress has taken any official action indicating that in its judgment any of these bills became laws. See The Pocket Veto Case, *supra,* 690, 691. Examination of the House Calendars shows that in the period since that covered by the Attorney General's memorandum, 54 bills have been pocketed before the end of a Congress with no attempt to return them. This was done twice in the Seventy-first Congress, once in the Seventy-second Congress, twenty-eight times in the Seventy-fourth Congress, and twenty-three times in the First Session of the Seventy-fifth Congress. See also Veto Messages: Record of Bills Vetoed and Action Taken Thereon by the Senate and House of Representatives, Fifty-first Congress to Seventy-fourth Congress, Inclusive, 1889-1936, compiled under the direction of Edwin A. Halsey, Secretary of the Senate (1936).

that the Constitution has left an undefined area in which the veto power cannot be exercised, is the more unfortunate since, in the circumstances, it seems almost certain that the Court will be called upon to reexamine it.

If, on the other hand, I am right in my view that the President was here prevented from returning the bill, we are brought unavoidably to the decision of the question presented by the petition for certiorari and ued at the Bar as the controlling question, whether the President is deprived of the veto power whenever return of a bill within the prescribed ten days is prevented by the adjournment alone of the house in which the bill originated.

The framers, in seeking to establish and preserve the presidential veto, were aware that the originating house, unlike the President who is without incentive to avoid receipt of a bill which he is free to veto, might have the strongest motives to avoid the veto of a bill, if that were possible, by preventing its return or by challenging the fact of its return. They accordingly took care to provide for the return of a bill to the originating house by an act of public notoriety—its delivery to the house in session; and recognizing that return might be prevented by adjournment, they declared that in that case it should not become a law.

The possibility that a return may be prevented by the adjournment of a single house during a session of Congress is not removed by deciding that a secretary or some other officer of the originating house may receive a returned bill during the period of a three-day adjournment. Either house may and does on occasion adjourn for longer periods, with the consent of the other.[6] An adjournment coincident with death or absence of the officer may prevent the return. Whatever authority in the premises the Senate or the House may give to its officer, it may withhold or withdraw. If the dictum now pronounced correctly states the fundamental law, the originating house may shorten the period for the exercise of the veto power or thwart it altogether by the simple expedient of adjournment after withdrawing the supposed authority of any officer to receive the vetoed bill.

This Court has emphasized, as does the language of the Constitution, the great importance of the veto power and the dominating purpose expressed in the constitutional provision that the power shall

[6] Cannon, Precedents, Vol. 8, p. 816.

not be curtailed or the ten days, allowed for its exercise, shortened. *Edwards* v. *United States,* 286 U. S. 482, 486, 493-494; *The Pocket Veto Case, supra,* p. 678. The words make it certain that the only adjournment which can prevent return of a bill by the President is that of the house in which the bill originates and to which, if vetoed, it is to be returned. Continuance in session of the other house does not facilitate return. No more can its adjournment obstruct return. Adjournment by the originating house can alone have the consequence to be guarded against, prevention of return. Hence, it was adjournment of the originating house with which the framers were concerned. There is no reason of which we are aware, and none has been suggested, for supposing that in creating and protecting the veto power they regarded the adjournment *vel non* of the non-originating house as of any consequence, or that they had any thought of leaving the President stripped of the veto power, either by chance or by design, whenever the originating house adjourned without the other. The men who created the framework of our government are not lightly to be charged with such an omission. The charge now made finds its only support in a punctilio of grammar.

" . . . we must never forget, that it is a constitution we are expounding." *McCulloch* v. *Maryland,* 4 Wheat. 316, 407. Its provisions are not to be interpreted like those of a municipal code or of a penal statute, though even the latter is to be read so as not to defeat its obvious purpose, *United States* v. *Raynor,* Nos. 146, 147, decided January 3, 1938, or lead to absurd consequences. *United States* v. *Katz,* 271 U. S. 354, 362. In defining their scope something more is involved than consultation of the dictionary and the rules of English grammar. They are to be read as a vital part of an organic whole so that the high purpose which illumines every sentence and phrase of the instrument may be given effect in a consistent and harmonious framework of government.

The Court has hitherto consistently held that a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole, is not to be favored. The phrase "due process" in the Fifth and Fourteenth Amendments has long since been expanded beyond its literal meaning of due procedure. See *Davidson* v. *New Orleans,* 96 U. S. 97; cf. Brandeis, J., concurring in *Whitney* v. *California,* 274 U. S. 357,

373. The term "contract" in the contract clause is not confined literally to the contracts of the law dictionary. *Dartmouth College* v. *Woodward,* 4 Wheat. 518. The prohibition against their impairment has never been taken to be inexorable. *Home Building & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398, and cases cited at 430 *et seq.* The injunction that no person "shall be compelled in any Criminal Case to be a witness against himself" is not literally applied. *Brown* v. *Walker,* 161 U. S. 591, 595. "From whatever source derived", as it is written in the Sixteenth Amendment, does not mean from whatever source derived. *Evans* v. *Gore,* 253 U. S. 245. See, also, *Robertson* v. *Baldwin,* 165 U. S. 275, 281, 282; *Gompers* v. *United States,* 233 U. S. 604, 610; *Bain Peanut Co.* v. *Pinson,* 282 U. S. 499, 501; *United States* v. *Lefkowitz,* 285 U. S. 452, 467.

But here, regardless of the constitutional purpose and the larger considerations which have usually guided our interpretation of the Constitution as an instrument of government, it is insisted that the phrase "unless the Congress by their Adjournment prevent its Return" cannot be taken to include the adjournment alone of the single house whose adjournment is in every case the only effective means of preventing a return. It is said that the word "Congress" used to describe the body whose adjournment occasions the pocket veto, followed as it is by the plural possessive pronoun "their", can refer only to the two houses comprised in "the Congress" and hence cannot refer to adjournment of a single house. This subordination of the framers' main objective to a meticulously grammatical interpretation of their words is unwarranted. It would hardly be suggested that the command, "Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy", (Art. I, § 5, cl. 3) calls for the concurrence of the judgment of all the members of a house, in order to ban publication of a journal: "their Judgment" is obviously that of the controlling part of the membership—that part whose opinion, under applicable rules of congressional procedure, is decisive of the question. A similar analysis based on the purpose and context of the clause now before us demands recognition that the draftsmen were concerned with the adjournment only of that part of the Congress to which return was to be made and whose absence would thus prevent return of a bill by the President. In the light of these dominant facts it seems plain

that in using the words "their Adjournment" the framers referred to any action taken by the members of Congress of either house or both houses, which was effective to prevent return of a bill by the President to the originating house. The very force of the circumstances to which the words are applied gives emphasis to "Adjournment" as that which prevents return, and to "their" as referring to the action of those members of Congress which effects the adjournment. This usage parallels that in the clause requiring the publication of the journals of both houses "excepting such Parts as may in their Judgment require Secrecy." In both instances the significant action, adjournment or the exercise of judgment as the case may be, is that of those members whose action is effective to accomplish the contemplated result—there, prohibition of publication; here, prevention of return to the originating house. Thus read, no word is without appropriate meaning and the clause is consistent both with the obvious purpose and with the grammatical usage appearing elsewhere in the Constitution.

I cannot ignore that purpose and say that for no discernible reason other than our present-day notions of grammatical construction we are compelled to read the words as excluding from the operation of the clauses designed to protect the veto power, every case where the return of a bill is prevented by adjournment of a single house.

Mr. Justice BRANDEIS concurs in this opinion.